2568.

SUPREME COURT OF THE UNITED STATES.

No. 75.

GEORGE BULKLEY, PL'FF IN ER.,

vs.

CHRISTIAN HONOLD.

IN ERROR TO THE CIRCUIT U. S. FOR THE EASTERN DISTRICT OF LOUISIANA.

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Attest: J. W. GURLEY,
Clerk.

2004

UNITED STATES OF AMERICA,
Eastern District of Louisiana, city of New Orleans.

CHRISTIAN HONOLD
vs.
GEORGE BULKLEY. } No. 2,392.

Pleas and proceedings before the honorable the Circuit Court of the United States for the fifth circuit and eastern district of Louisiana, at the April term, A. D. 1855, thereof, held at the city of New Orleans, in the district aforesaid, on the 1st day of May, A. D. 1855.

Be it remembered, that heretofore, to wit, on the ninth day of November, A. D. eighteen hundred and fifty-four, came George Bulkley, by his attorneys, Messrs. Wolfe & Singleton and Messrs. Durant & Hornor, in the clerk's office of the said Circuit Court, and filed a transcript of a record from the Second District Court of New Orleans, which said *transcript* is in the words and figures as follows, viz:

STATE OF LOUISIANA,
Second District Court of New Orleans.

CHRISTIAN HONOLD
vs.
GEORGE BULKLEY. } No. 7,727.

Petition. Filed 26th April, 1854.

To the honorable the judge of the Second District Court of New Orleans:

The petition of Christian Honold, who resides in the city of New Orleans, respectfully represents, that, at said New Orleans, on or about the 1st of February, 1854, petitioner bought of George Bulkley, who resides in the city of New York, but who was represented in New Orleans by his duly authorized agents and attorneys in fact, Messrs. Bogart, Williams, & Co., four-sixteenths of a certain ship called the "Ashland," then lying in the port of New Orleans, of the burthen of 631 $\frac{2}{95}$ tons or thereabouts, for the price and sum of $6,875, being four-sixteenths of the total price of $27,500, paid for the whole of the said ship, as appears from the act of sale, of which a copy is annexed for reference.

Your petitioner further shows, that at the time the contract for the purchase aforesaid was made, and the said ship taken into possession of petitioner, the said ship had already a part of her cargo

on board for an intended voyage to Havre, France, and that it was consequently impracticable to make any examination or inspection of the condition of said ship, but that, from the representations made to petitioner, he believed, and was authorized to believe, that the said ship was sound and seaworthy, and in all respects fitted for her proposed voyage, and that the said ship was worth the price paid therefor. That accordingly the said ship, having taken a full cargo on board, sailed on or about the third February, 1854, on her voyage to Havre. That on or about the 5th of February the ship was discovered to be making a great deal of water; that the leak continued to increase, till, on the 10th of February, it was found necessary, on account thereof, to return to the port of New Orleans, where said ship arrived and was moored again on the 16th February, 1854; that a survey was thereupon held upon said ship, which was ordered into the dock for repairs; and upon a further examination, it was discovered that the timbers of the ship, on both sides, were entirely decayed and rotten, from the turn of the bow forward to the after end of the mizzen chains aft, and that it was also discovered, on taking off the bends for the purpose of putting in the new timber required, that the ship had been previously opened and found defective, and that short pieces of wood had been placed in amongst the rotten timber to hold the fastenings of the plank.

Petitioner further shows, that the defective condition of said ship, as herein stated, greatly diminished its value, and rendered it altogether unseaworthy, and unfitted for the intended voyage, without great and expensive repairs. That in consequence of said defects, petitioner has sustained loss and damage, and has incurred expenses to the extent of $20,000, and that, as he is *avoided* and believes, the amount will be yet further increased to the full aggregate sum of $25,000.

Petitioner further avers, that the said defective condition of the ship was fully known to the said George Bulkley and to his joint owners, but that he frandulently concealed the same from petitioner, and combined and conspired with his joint owners to suppress the knowledge thereof, for the purpose defrauding petitioner, and that, as petitioner is advised and believes, the said George Bulkley is therefore responsible to petitioner, jointly and severally with the other owners of the said ship, for the full amount of $25,000 as aforesaid.

Petitioner further shows that he has, under date of the 25th April int., (1854,) made his affidavit that the said George Bulkley is indebted to him in the sum of $5,000, being *frour*-sixteenths of the aforesaid sum of $20,000, and the whole amount which petitioner was able to declare under oath as now due by the said George Bulkley as vendor of four-sixteenths of said ship; that he has also filed the bond required by law, and has sent out an attachment against said George Bulkley.

Wherefore, petitioner prays that said attachment be maintained, that an attorney be appointed to represent the said absent defendant, that he be served with a copy of this petition, and cited to appear and answer; and after all due proceedings had, that the said George Bulkley be ordered and adjudged to pay to petitioner the full sum of $25,000, with legal interest and costs, with privilege to the extent of $5,000 on the property attached, and for general aid relief.

("Signed") BENJAMIN, BRADFORD & FINNEY,
Att'ys.

Affidavit.

CHRISTIAN HONOLD
vs.
GEORGE BULKLEY. } Second Dist. Ct.

Christian Honold, pl'ff herein, being duly sworn, saith, that the said defendant, George Bulkley, is justly and truly indebted to this affiant in the full sum of five thousand dollars, which sum is now due and payable, and that the said George Bulkley resides permanently out of the State of Louisiana, viz: in the city and State of New York. Sworn to and subscribed before me, this 25th April, 1854.

("Signed") CH. HONOLD.
("Signed") OCTAVE MOREL,
D'y Clerk.

"Bond."

Know all men by these presents, that we, Christian Honold, as principal, and A. Bergerol, of , are held and firmly bound unto George Bulkley, of New York, in the sum of eight thousand dollars, to be paid to the said George Bulkley, his heirs, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated on the 25th day of April, eighteen hundred and fifty-four.

Whereas the above bound Christian Honold has applied to the honorable the Second District Court of New Orleans for a writ of attachment against said George Bulkley:

Now, the condition of the above obligation is, that we, the above Christian Honold, as principal, and A. Bergerol, as surety, will well and truly pay to the said defendant, in said attachment suit, all such damages as he may recover against us, in case it should be decided that the said attachment was wrongfully obtained.

(Signed) CH. HONOLD, [L. S.]
(Signed) AM. BERGEROL, [L. S.]

Signed, sealed, and delivered in the presence of—
"Signed" CH'S A. TAYLOR.

Order.

Let an attachment issue in this case, as within prayed for, and according to law, on the plaintiff giving bond and security in the sum of eight thousand dollars, said bond conditioned as the law directs.

New Orleans, 25th April, 1854.

("Signed") A'DRE DERBES,
Clerk.

Deed of sale.

Filed 26th April, 1854.

Know all men by these presents, that I, F. W. Williams, one of the firm of Bogert, Williams, & Co., the true attorneys of F. R. Griffin, deceased, owner of $\frac{1}{4}$, C. Bulkley and L. D. Bulkley, owners of $\frac{3}{16}$, and L. L. Sturgess and George Bulkley, owners of $\frac{9}{16}$, in and into the ship called the "Ashland," of New York, burthen 631 and $\frac{3}{95}$th tons, for and in consideration of the sum of twenty-seven thousand five hundred dollars, cash to me in hand paid by Christian Honold, of the city of New Orleans, and possession granted since the 26th December, 1853, the receipt whereof is hereby acknowledged, have, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said Christian Honold said ship "Ashland," of New York, together with all and singular her masts, yards, sails, rigging, anchors, cable, boats, tackle, apparel, and appurtenances, which said vessel is registered in the port of New Orleans, in the words following, to wit:

No. 9, Tempory.

In pursuance of an act of the Congress of the United States of America, entitled "An act concerning the registering and recording of ships or vessels:"

Hobert B. Benson, of the city, county, and State of New York, having taken or subscribed the oath required by the said act, and having sworn that Edwin Bulkley and Lewis Bulkley owners of $\frac{3}{16}$th, Lathrop L. Sturgess $\frac{5}{16}$, George Bulkley $\frac{4}{16}$, all of same place, and Federick H. Griffin $\frac{4}{16}$, of Gilford, State of Connecticut, are the three only owners of the ship or vessel called the Ashland, of New York, whereof H. B. Benson is at present master, and as he hath sworn, is a citizen of the United States, and the said ship or vessel was built at Swansey, State of Massachusetts, in the year 1846, as per register No. 306, issued at the port of New York on the 10th day of November, 1846, now surrendered property, changes in part; and said register having certified that the said ship or vessel has two decks and three masts, and that her length is one hundred thirty-four feet eight inches, her breadth thirty-two feet

three inches, and that she measures six hundred thirty-one and $\frac{32}{95}$ tons; that she is a ship, has a square stern, no galleries, and a bettit head; her depth sixteen feet $1\frac{1}{2}$ inches. And the said Robert H. Benson having agreed to the description and admeasurement above specified, and sufficient security having been given, according to the said act, the said ship has been duly registered at the port of New Orleans, the first day of February, in the year of our Lord one thousand eight hundred and fifty-four:

To have and to hold the said ship Asland, of New York, unto the said Christian Honold, his heirs, his executors, administrators, and assigns forever. And we, the said Bogert, Williams & Co., for ourselves, heirs, executors, and administrators, do hereby covenant and agree to and with the said Christian Honold, his heirs, his executors, administrators, and assigns, that at the execution of these presents, I am, as aforesaid firm of Bogert, Williams & Co., the true attorney of said F. H. Griffin, C. Bulkley, L. D. Bulkley, L. L. Sturgess, and Geo. Bulkley, the true and lawful owners of the said ship Ashland, of New Orleans, and appurtenances, and that I now have full right and authority to sell and dispose of the same, freed from and cleared of all claims, incumbrances, or demands whatsoever.

In witness whereof, I have hereunto set my hand and seal, at the city of New Orleans, the first day of February, in the year of our Lord one thousand eight hundred and fifty-four.

"Signed" F. H. GRIFFIN,
E. BULKLEY,
L. D. BULKLEY,
L. L. STURGESS,
GEO. BULKLEY.

By their attorney, "Signed" BOGERT, WILLIAMS, & CO.,
Per. F. W. WILLIAMS,
C. HONOLD.

Signed, sealed, and delivered in the presence of—
"Signed" L. H. DESFORGES,
P. CHARBONNET.

Deposited at the C. H., N. Orleans, the 2d Feb'ry, 1854, at 12 o'clock m.

Recorded book B, folio 186.

District and port of New Orleans. Collector's office, 4th April, 1854.

I, John M. Hincks, d'y collector of the custom for the dist. and port of New Orleans, do hereby certify the above to be a true copy of the original on file in the office.

Given under my hand and seal of office, at the custom house of N. Orleans, the day and year as above written.

("Signed") J. M. HINCKS,
D'y Collector.

Citation.

"STATE OF LOUISIANA,"
Second District Court of New Orleans.

Mr. George Bulkley, who resides out of the State:

You are hereby summond to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the Second District Court of New Orleans, in ten days after service hereof.

Witness the honorable James N. Lea, judge of the said Court, the 27th day of April, in the year of our Lord 1854.

("Signed") STEPHEN BARON,
D'y Clerk.

CHRISTIAN HONOLD
vs.
GEORGE BULKLEY. } No. 7,727.

Sheriff's return.

Received 27th April, 1854, and on the same day, month, and year posted copy of the within citation to the door of the church of the parish of St. Louis, of Orleans, in the city of New Orleans, and to that of the room in which this honorable Court is held. Returned 28th April, 1854.

("Signed") P. P. LEBARRE,
D'y Sh'ff.

Attachment.

THE STATE OF LOUISIANA,
Second District Court of New Orleans.

The State of Louisiana to the sheriff of the parish of Orleans, "greeting:"

Whereas, due proof has been made before the Second District Court of New Orleans, by Christian Honold, that George Bulkley is indebted unto him in the sum of five thousand dollars, and that the said George Bulkley resides permanently out of the State of Louisiana: now, therefore, you are commanded, in the name of the State of Louisiana, and of the Second District Court of New Orleans, to seize and attach, according to law, and take into your possession the goods and chattels, lands and tenements, rights and moneys, effects and credits of the said George Bulkley, if any you find in said parish, to the amount of what will suffice to discharge the said debt and costs of suit, and that you give notice of these proceeding by leaving a copy thereof at the last place of abode of the

said defendant, if in said parish, and causing a copy thereof to be affixed at the door of the parish church of said parish; and make a return of this writ, and endorse thereon the manner in which you have executed it before our Court, on or before the third Monday of June, of the year of our Lord 1854.

("Signed") OCTAVE MOREL,
D'y Clerk.

Clerk's office, 25th day of April, 1854.

Sheriff's return.

Received 25th April, '54, and on the same day attached the ship Owego, her tackle, apparel, and furniture, or rather the one-fourth interest of the defendant, George Bulkley, in said ship, and also on the same day posted a copy of this writ to the door of the church of the parish of St. Louis, of Orleans, in the city of New Orleans, and to that of the room in which this honorable Court is held, and which said ship was released on the fourth of May instant, the master, S. G. Stevens, having executed bond in the appraised value of defendant's interest in said vessel, to wit, in the sum of ten thousand dollars, with J. A. Woodruff & Co. as securities, conditioned according to law, and which bond is herewith returned this 4th May, 1854.

("Signed") S. BLOSMAN,
D'y Sheriff.

Bond.

Know all men, that we, S. G. Stevens, master of the ship Owego, for himself and owners, as principals, and Jno. O. Woodruff & Co., as securities, are held unto Mandeville Marigny, sheriff of the parish of Orleans, in the State of Louisiana, in the penal sum of ten thousand dollars, (10,000,) for payment whereof to the said Mandeville Marigny, his executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators respectively by these presents; as witness our respective names hereunto affixed, at New Orleans, *at New Orleans*, this 4th day of May, in the year one thousand eight hundred and fifty-four.

Whereas, in and by virtue of a writ of attachment issued out of the honorable the 2d District Court of New Orleans, at the suit of Christian Honold vs. George Bulkley, in the ship Owego, being four-sixteenths appraised under a consent of parties at the sum of $40,000 for the entire ship, or ten thousand dollars for the $\frac{4}{16}$ths, has been seized, taken into the custody of the sheriff, and detained according to law, but the same has been released, and the attachment thereon set aside, upon the appearance of the master of said ship, and delivering to the said Mandeville Marigny, sheriff, the present obligation.

The condition of which is such, that if the said defendant shall satisfy such judgment as may be rendered against him, to the value of the property attached, in the suit pending as above mentioned, then this obligation to be void, or else to remain in full force.

("Signed") S. G. STEVENS,
JNO. A. WOODRUFF & CO.,
By A. MEOULTON.

Signed and delivered in presence of—
("Signed") J. P. WALDEN.

Assignment.

I do hereby assign, transfer, and set over to Christian Honold all my rights, title, and interests in and to the within bond. New Orleans, May 4th, 1854.

("Signed") S. BLOSSMAN,
D'y She'ff.

Petition of George Bulkley. Filed 1st May, 1854.

CHRISTIAN HONOLD
vs.
GEORGE BULKLEY. } Second District Court.

To the honorable the judge of the Second District Court of New Orleans.

The petition of George Bulkley, who is a citizen of the State of New York, respectfully represents:

That a suit has been instituted before this honorable Court against your petitioner by one Christian Honold, who is a citizen of the State of Louisiana, in which suit a writ of attachment has issued, under which the property of your petitioner has been seized by the sheriff of this parish.

That petitioner is desirous of removing this cause for trial into the next Circuit Court of the United States to be held in this district, and now comes into this honorable Court for the said purpose only; and here, at the time of first entering his appearance, offers his bond in the sum of dollars, with good and sufficient security, for his entering in the said Circuit Court of the United States for the eastern district of Louisiana, on the first day of the next session thereof, copies of the petition and citation, and of all other process in this suit against him.

And this appearer and petitioner shews to this honorable Court that the said matter in dispute in this cause exceeds the sum at value of five hundred dollars.

Wherefore, petitioner prays, the premises being considered, this honorable Court may accept the bond and security now offered,

and proceed no further in the cause, and may direct this cause to be transferred to the Circuit Court of the United States for the eastern district of Louisiana next to be holden in that district; and he prays for all such other aid, relief, remedy, and process as the nature of this cause may require and law permit.

("Signed") DURANT & HORNOR,
Atty's for Appearer and Petitioner.

Affidavit.

Francis W. Williams being duly sworn, deposes and says, that he is a member of the firm of Bogest, Williams, & Co., who are the attorneys in fact and agents of George Bulkley, the foregoing petitioner and appearer, and that all the facts stated in the foregoing petition contained are true.

"Signed" F. WILLIAMS.

Sworn to and subscribed before me, this 1st day of May, 1854.

"Signed" C. V. JONTE,
Justice of the Peace.

Rule. Filed 1st May, 1854.

CHRISTIAN HONOLD
vs.
GEORGE BULKLEY.

Extract from the minutes Second District Court.

On motion of Durant & Hornor, attorneys for George Bulkley, and on showing to the Court that the defendant has filed his petition herein, praying for the removal of this cause to the United States Circuit Court for the eastern district of Louisiana—

It is therefore now ordered by the Court, that Christian Honold, plaintiff herein, do show cause, on Wednesday next, the 3d day of May, 1854, at 10 o'clock a. m., why this suit should not be removed as prayed for, and the security offered be accepted.

Sheriff's return.

Rec'd May 1, 1854, and on the second day of the same month and year served a copy of the within rule personally on J. B. Finney, esq., a member of the law firm of B. B. & Finney, attornies for the plaintiff, Christian Honold. Returned same day.

"Signed" P. P. LABARRE,
Dy. Sheriff.

Judgment on rule. Rendered 4th May, 1854.

CHRISTIAN HONOLD
vs.
GEORGE BULKLEY.

In this case, the Court, having duly considered the application

made herein by the defendant for the removal of this case to the United States Circuit Court sitting in the eastern district of Louisiana, and considering that said application is well founded in law, it is orderedt hat said application be granted, and that the defendant have leave to remove this case as prayed for to the said Circuit Court, on his giving bond, with good and sufficient security, in the sum of five hundred dollars, that he will enter in said Circuit Court, on the first day of its next ensuing term, copies of the proceedings and process had herein.

Bond. Filed 1st May, 1854.

CHRISTIAN HONOLD
vs.
GEORGE BULKLEY. } Second District Court of New Orleans.

Know all men by these presents, that we, George Bulkley, as principal and as security, are held unto Christian Honold, a citizen of the State of Louisiana, in the penal sum of five hundred dollars, for the payment whereof to the said Christian Honold, his executors, administrators, and assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators respectively by these presents, as witness our hands this fourth day of May, 1854:

Now the condition of this obligation is, that if the above bound George Bulkley enter in the Circuit Court of the United States for the eastern district of Louisiana, on the first day of its next session, copies of the petition and citation, and of all other process in this suit against him, and there regularly enter his appearance, then this obligation shall be void, or else to remain in full force.

"Signed" GEORGE BULKLEY,
By DURANT & HORNER, *Atty's.*
"Signed" F. WILLIAMS.

Witness present—
"Signed" CHARLES W. HORNOR.

Order.

Let an attachment issue in this case, as within prayed for, and according to law, on the plaintiff giving bond and security in the sum of eight thousand dollars, said bond conditioned as the law directs. New Orleans, 25th April, 1854.

("Signed") A'DRE DERBES,
Clerk.

STATE OF LOUISIANA,
Second District Court of New Orleans.

I hereby certify that the foregoing fourteen pages contained a full and complete transcript of all documents filed, and of all the

proceedings had in the suit in which Christian Honold is plaintiff and George Bulkley is defendant.

In testimony whereof, I hereto set my hand and affix the seal of said Court, this fifth day of October, A. D. 1854, and the 79th of the independence of the United States of America.

[SEAL.]

(Signed) A'DRE DERBES,
Clerk.

I, James N. Lea, sole judge of the Second District Court of New Orleans, do hereby certify that Alexander Derbes is clerk of said Court, that the same is a court of record, having general jurisdiction, and that the signature A'dre Derbes to the foregoing certificate is in the proper handwriting of him, the said Alexander Derbes, clerk; to his official acts, as such, full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand and seal, at the city of New Orleans, on this 7th day of October, in the year of our Lord, 1854.

[SEAL.]

(Signed) J. N. LEA,
Judge.

Answer. Filed 13th Nov., 1854.

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the Eastern District of Louisiana.

CHRISTIAN HONOLD
vs.
GEORGE BULKLEY.

And now, into this honorable Court, by his counsel, comes the defendant, George Bulkley, a citizen of the State of New York, residing in the city of New York, and for answer to the petition of the plaintiff, Christian Honold, says, that he denies all and singular the allegations therein contained, and specially he denies the charges of *fraurd* and fraudulent concealment laid against him in said petition, and says, that in the matters and things stated in the plaintiff's petition he acted in entire good faith and in fair dealing.

Wherefore he prays to be hence dismissed with costs.

(Signed) WOLFE & SINGLETON,
Att'ys for Def't.
DURANT & HORNOR,
Att'ys of Def'ts.

Minutes. April term, 1855.

New Orleans, Tuesday, 1st May, 1855. Court met pursuant to

adjournment. Present, Hon. J. A. Campbell, presiding judge. Present, Hon. T. H. McCaleb, district judge.

C. HONOLD
vs.
GEO. BULKLEY.

This cause came on to be heard, and *were* argued by J. P. Benjamin, for pl'ffs, and by Chas. Hornor and Thos. R. Wolfe, esqs., for defendants, and submitted to the Court, and taken under advisement.

Minutes. April term, A. D. 1855.

New Orleans, Tuesday, 3d May, A. D. 1855. Court met pursuant to adjournment. Present, Hon. J. A. Campbell, presiding judge. Present, Hon. T. H. McCaleb, district judge.

CHRISTIAN HONOLD
vs.
GEO. BULKLEY.
No. 2,392.

This cause having been submitted on yesterday, the Court this day delivered and ordered to be filed a statement of the facts of the case, and directed an inquiry into certain matters before the clerk of this Court as commissioner.

Statement of facts, &c.

CHRISTIAN HONOLD
vs.
GEORGE BULKLEY.

This cause was submitted to the Court upon the pleadings, documentary proof on file, depositions, and the oral examination of witnesses produced by both parties.

Thereupon the Court finds to be proven that the defendant was a part owner of the ship Ashland, and joined with the other owners in selling the same to the plaintiff at the time and for the price stated in the petition and bill of sale executed by their agents, and on file as evidence.

2. That the negotiations for the sale were commenced near the middle of January, 1854, at New Orleans, between the plaintiff and the agents, for the defendant and other owners, and the sale was completed there, by the delivery of the vessel and payment of the price.

3. That the vessel was not in a condition to be *throughly* examined pending this negotiation, in consequence of the cargo aboard; and the defects hereafter mentioned were not apparent defects, but were concealed from observation by a ceiling and other

coverings over the defective parts; and that the defects were not declared to nor known by the plaintiff at or before the sale; but he purchased the vessel supposing her to be of the class A, No. 1, at which he was informed by the agents of the defendant, and so ascertained by inquiry himself, she was rated at the insurance offices in New Orleans.

4. That the plaintiff was not informed of the nature and extent of the defects in the ship until the survey of Swain & Lovett, inspectors, which is filed in the cause as evidence, and which represents accurately the nature of the defects in the ship.

That the ship was so defective at the date of the sale as to be useless for the purpose for which she was purchased, and was not worth the cost of the necessary repairs, and that this condition was discovered the 20th March, 1854, after the survey and inspection was completed.

5. The Court further finds, that before the negotiations for the sale had commenced, the agents of the owners, including the defendant, had engaged a cargo for Havre, and that the lading of the ship was $\frac{2}{3}$ds completed when she was sold to the plaintiff; that the plaintiff undertook in the contract to complete this freight engagement, to pay all the charges and expenses of the vessel from the time her inward cargo had been removed, (26th December, 1853,) and also the outward expenses of the voyage, and he was to receive the advantages therefrom, and to exonerate the defendant and others for liabilities therefor.

6. The Court further finds, that the lading was completed and the ship was ready for sea the 3d February, 1854, and sailed from New Orleans on that day; that on the 5th February she commenced leaking, and so continued till the 10th, when the officers and crew pronounced her to be unseaworthy, and discontinued their voyage to Havre.

7. The Court finds that the vessel returned and arrived in New Orleans the 16th February, 1854, and was subjected to examination within the month following, when it was ascertained that she was unseaworthy and useless, in the manner specified in the certificate of Swain & Lovett, on file as evidence.

The Court find that the entire costs and expenses of the vessel, from the purchase until she was ready for sea, in August, '54, amount to the sum of twenty-eight thousand five hundred and thirty-six and $\frac{80}{100}$ dollars ($28,536 $\frac{80}{100}$.)

The repairs made after her arrival in New Orleans, in February, amount to the sum of twenty-six thousand eight hundred and thirty-six and $\frac{67}{100}$ dollars ($26,836 $\frac{67}{100}$.

The expenses of the vessel and cargo in New Orleans, from her arrival in February till her departure in August, amount to thirty-one thousand one hundred and ten and $\frac{73}{100}$, (including repairs,) and the profits lost upon the voyage that failed in February amount to ———— (no evidence.)

The Court find the repairs of the vessel were completed about the first of August, 1854, and that she then took in her cargo and proceeded to Havre; that when her repairs were completed she was worth in the market the sum of thirty thousand dollars, $30,000.

The Court exonerates the defendant from the allegations of fraud, and find that he was ignorant of the defects in the vessel, and made no false representations in reference to her to the plaintiff.

It is the opinion of the Court, that the plaintiff is entitled to maintain this action, without having put the defendant in legal default.

And that he is entitled to recover the sum of five thousand five hundred dollars, (5,500,) which it finds to be the difference between the actual value of the shares of the defendant in the vessel at the sale and the price paid, and which difference arose from the latent defects in the same.

Also the sum of nine hundred and eighty-six and $\frac{17}{100}$ dollars, ($986 $\frac{17}{100}$,) being one-fourth part of the expenses of the vessel and cargo from the time the plaintiff became subject to them (26th December, 1853) to the time when the discovery of the nature and degree of the defects was made, (20th March, '54,) and from which expenses the plaintiff derived no profit.

The Court allows interest from the commencement of the suit and costs.

The Court disallows the claim for the profits of the voyage broken up by the discovery of the defects in the vessel. Also the claim for demurrage of the vessel while undergoing repairs, and the costs of these repairs. Also for indemnity from the claim of shippers on the vessel, no evidence of loss having been adduced.

(Signed) J. A CAMPBELL,
Asso. Justice.

Final judgment.

CIRCUIT COURT OF THE UNITED STATES,
Fifth Circuit and Eastern District of Louisiana.

November Term, A. D. 1855.

New Orleans, Monday, 12th November, 1855. Court met pursuant to adjournment. Present, Hon. J. A. Campbell, presiding judge. Present, Hon. T. H. McCaleb, district judge.

CHRISTIAN HONOLD
vs.
GEORGE BULKLEY. } No. 2,392.

This cause was argued at the last term upon the principles of law involved in the pleadings and evidence, and the Court, upon the proposition of the parties to the suit, referred to the clerk for a

report, the facts of costs, expense, and damage necessary to complete the case then made up. And the Court now adopts the conclusions of the clerk, and directs that the case then prepared be completed in accordance with the same, and that judgment be entered for the plaintiff for the sum of six thousand four hundred and eighty-six dollars and seventeen cents, with interest thereon at the rate of five per cent. per annum from the 27th day of April, 1854, until paid, and for costs of suit.

Decree rendered 12th November, 1855.

Decree signed 16th November, 1855.

Signed J. A. CAMPBELL,
Asso. Just. S. C. U. S.

Petition for writ of error. Filed 3d May, 1855.

To the hon'ble the judges of the Circuit Court of the United States for the fifth circuit and eastern district of Louisiana:

GEORGE BULKLEY
vs.
CHRISTIAN HONOLD. } In error.

The petition of George Bulkley, plaintiff in error, with respect, shows, that he is advised that there is error to his irreparable injury in the judgment rendered against him in this case on the 16th November, 1855, and that he desires to prosecute a writ of error therefrom to the Supreme Court, to operate as a supersedeas.

Wherefore, he prays that he be allowed a writ of error from the said judgment to the Supreme Court of the United States, to operate as a supersedeas, upon his giving a bond, with good and sufficient security, as the law directs, and they, the def't in error, be duly cited.

Signed WOLFE & SINGLETON, and
DURANT & HORNOR,
For Pltff. in Error.

Minutes.

November Term, A. D. 1855.

New Orleans, Wednesday, 21st Nov., 1855. Court met pursuant to adjournment. Present, Hon. Theo. H. McCaleb, district judge. Absent, Hon. J. A. Campbell, presiding judge.

CHRISTIAN HONOLD
vs.
GEORGE BULKLEY. } 2,392.

On motion of Durant & Hornor and of Wolfe and Singleton, esqrs., of counsel for the defendants, and on their

presenting and filing the petition of said defendant, representing that he feels aggrieved by the judgment herein rendered against him on the 16th day of November instant, and praying for a writ of error therefrom, the same to operate as a supersedeas, it is ordered that the said writ be allowed as prayed for, returnable to the next term of the Supreme Court of the United States, on the said defendants giving bond, conditioned as required by law, in the penal sum of ten thousand dollars, with Jno. O. Woodruff & Co. as surety thereto.

Bond for writ of error. Filed 21st Nov'r, 1855.

CIRCUIT COURT OF THE UNITED STATES,
For the Fifth Circuit and Eastern District of Louisiana.

GEORGE BULKLEY
vs.
CHRISTIAN HONOLD. } In error.

Know all men by these presents, that we, George Bulkley and John O. Woodruff & Co. are held and firmly bound unto the above-named Christian Honold in the sum of ten thousand dollars, to be paid to the said Christian Honold, his executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this seventeenth day of November, 1855.

Whereas, the above-named George Bulkley hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit by the Circuit Court of the United States for the fifth circuit and eastern district of Louisiana:

Now therefore, the condition of this obligation is such, that if the above-named George Bulkley shall prosecute his said writ of error to effect, and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

GEORGE BULKLEY, [SEAL.]
By his Att'ys, DURANT & HORNOR, and
WOLFE & SINGLETON,
JNO. O. WOODRUFF & CO., [SEAL.]

Sealed and delivered in the presence of—

UNITED STATES OF AMERICA,
Circuit Court of the United States,
Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, John W. Gurley, clerk of the Circuit Court of the United

States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 23 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of Christian Honold *vs.* George Bulkley, No. 2,392 of the docket, so far as the same now remain of record or on file in said Court.

Witness my hand and the seal of said Court, at the city of New Orleans, this 30th day of December, A. D. 1855.

J. W. GURLEY,
Clerk.

UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable judges of the Circuit Court of the United States in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or one of you, between Christian Honold and George Bulkley, a manifest error hath happened, to the great damage of the said George Bulkley, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 21st of November, in the year of our Lord one thousand eight hundred and fifty-five.

J. W. GURLEY,
Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

THE UNITED STATES OF AMERICA.

The President of the United States to Christian Honold, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United